THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

W.P.No.32535 of 1997

Date: 16.02.2006

Between:

R.P. Kaushik, S/o V.P. Sharma, Hindu, aged about 53 years, R/o. D/42, Siddarth Nagar, Jaipur- 302017.

… Petitioner.

And

The Director, Watches, HMT Ltrd, 59, Bellari Road, Bangalore and another.

… Respondents.

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

W.P.No.32535 of 1997

O R D E R:

Proceedings of the first respondent, dated 03.04.1995, whereby the petitioner, on being found guilty of grave and serious misconduct, was dismissed from service and the proceedings of the second respondent, dated 17.08.1995, whereby the appeal preferred by the petitioner was rejected and the order of disciplinary authority was upheld, are impugned in this writ petition.

2. During the pendency of the writ petition, the petitioner died. His wife, Smt Sunitha and his sons Sri Mukul Kaushik and Sri Kapil Kaushik were brought on record as his legal representatives.

3. Facts, to the extent necessary for this writ petition, are that the petitioner was initially appointed as a Junior Engineer in the respondent-Company on 11.06.1975. He was promoted as an Engineer in 1979 and further promoted as a Manager in 1985. Petitioner was promoted as an Assistant General Manager, with effect from 01.01.1991, and was posted at Ahmedabad. According to the petitioner, on 28/29.09.1993, a monthly review meeting was held at Hyderabad and after conclusion of the meeting, the General Manager (Lamps) instructed him to stay at Hyderabad. Despite his staying back at Hyderabad, as he could not get an appointment to meet the General Manager (Lamps), who was busy with his meetings with the Chairman and Managing Director, he left Hyderabad. The petitioner was issued orders of transfer on 18.10.1993 transferring him from Ahmedabad to Hyderabad and was directed to report to the Joint General Manager (Marketing). Petitioner contends that, vide letter dated 20.10.1993, he had requested the General Manager to pay his salary for the month of September, 1993 and other incidental expenses and to have informed that, on receipt of the said amounts, he would join duty at the place of his transfer. According to the petitioner, despite his request, he was neither paid the transfer advance nor salary. The petitioner is said to have received a Telex message on 27.10.1993 at his Ahmedabad office to join duty at Hyderabad, pursuant to which, he handed over charge on 28.10.1993 to the next incharge at Ahmedabad. Despite his reporting at Hyderabad, the respondents did not accept his joining report on the ground that he had not handed over charge at Rajasthan, and he was asked to return back to complete the task of handing over charge at Rajasthan. The petitioner went over to Rajasthan for handing over certain files to Sri R.K.Sharma but the said R.K.Sharma did not join duty at Jaipur till 24.11.1993. Petitioner would contend that he was forced to avail leave as he was directed to handover charge of Rajasthan to Sri R.K.Sharma and after handing over charge, he left for Hyderabad and reported for duty thereat on 29.11.1993.

4. The petitioner was served with charge sheet dated 17.01.1994. He submitted his explanation thereto on 08.02.1994, denying the charges. Pursuant to the charge memo dated 19.03.1994, an enquiry officer was appointed to conduct the enquiry and a presenting officer to present the case on behalf of the Management. On the basis of the enquiry report, holding the petitioner guilty of

the charges, the disciplinary authority, vide proceedings dated 3.4.1995, imposed on him the punishment of dismissal from service. Aggrieved thereby the petitioner preferred an appeal to the second respondent, which was also rejected vide proceedings dated 17.08.1995. The petitioner filed W.P.No.3626 of 1996 in the High Court of Rajasthan, Jaipur Bench, which was returned for want of territorial jurisdiction. Therefore, the present writ petition before this Court.

5. According to the petitioner, the order of dismissal was passed without proper enquiry being conducted in accordance with the procedure laid down, the enquiry officer had permitted the Management to have their statements recorded after the statement of the petitioner was recorded, the Management was permitted to file certain documents after the statement of the petitioner had been recorded thereby denying the petitioner reasonable opportunity of defending himself, the defence of the petitioner was taken at the initial stage of the enquiry, prior to the evidence on behalf of the Management, some of the charges levelled against him did not even constitute misconduct, the charges were vague, disciplinary action initiated against him amounted to victimization and he was harassed and denied payment of his salary. It is contended that the findings recorded in the enquiry are perverse, the disciplinary authority committed grave illegality in taking cognizance of a misconduct, which had already been pardoned by the competent authority, as the petitioner had tendered apology for not staying at Hyderabad beyond a period of one day and was accorded pardon, vide letter dated 07.12.1993. It is contended that the order of punishment, based on a non-existing misconduct, is illegal and erroneous, that the enquiry officer had recorded certain findings against the petitioner, which were not even the subject matter of the charge sheet, and is therefore a clear case of non-application of mind. It is contended that in the course of the enquiry proceedings, the enquiry officer had acted as a prosecutor and had cross-examined the petitioner at length, which according to the petitioner amounted to bias, which plea though taken in the appeal, was not specifically adverted to by the appellate authority. The petitioner would contend that the punishment, of dismissal imposed on him, is grossly disproportionate, and that failure to pay his salary for the month of September, 1993, despite his repeated requests, resulted in his not being able to effectively defend himself in the enquiry proceedings.

6. A counter affidavit is filed on behalf of the respondents by the Deputy General Manager, wherein it is stated that no notice can be taken of the allegations against other officers since they were not arraigned as parties to the writ petition. It is contended that M/s. HMT Limited, which is the proper and necessary party, is not arraigned as a respondent. It is stated that the petitioner, despite holding the responsible position of Assistant General Manger (Marketing), had indulged in serious acts of misconduct viz., leaving Head quarters after the monthly sales review meeting without permission of his superior officers despite clear instructions asking him not to go, reporting at Head Quarters on transfer without handing over charge of Rajasthan region, absenting himself from duty without leave or permission, failure to submit detailed tour reports and attendance particulars on time, supplying goods without obtaining required bank guarantees, acting in total violation of the instructions given to him, disobeying instructions not to raise any further bills on two Lamp dealers viz., M/s.Kanchan Enterprises and M/s.Jodhana Trading Corporation, thereby violating the credit policy of the Company and causing huge financial loss to it. It is stated that the petitioner was issued a charge sheet on 17.01.1994, for which he submitted his explanation on 08.02.1994, and since it was found not satisfactory, the Management had ordered that a domestic enquiry be conducted to enquire into the charges levelled against the petitioner. It is further stated that the petitioner participated in the enquiry and availed the opportunity given to him, that the Management filed 21 documents in support of the charges and examined two witnesses who were made available for cross-examination by the petitioner, that the petitioner examined himself and filed 26 documents in his defence, that the petitioner fully participated in the enquiry and availed the opportunity given to him and that the enquiry officer in his report found the petitioner guilty of misconduct. It is stated that a show cause notice was issued, enclosing thereto a copy of the enquiry report, calling upon the petitioner to show cause as to why the findings of the enquiry officer should not be accepted. In response thereto, the petitioner submitted his explanation on 30.01.1995 raising various untenable and unsustainable contentions and that the disciplinary authority, after careful perusal of the proceedings of the enquiry, the enquiry report and the petitioner's explanation dated 30.01.1995, held that the findings of the enquiry officer were

based on material available on record, and after considering the gravity and seriousness of the misconduct proved against him and his past record of service and on finding that there were no extenuating circumstances for awarding lesser punishment than that of dismissal, passed the order of dismissal from service vide proceedings dated 13.04.1995. It is stated that the petitioner filed an appeal to the Chairman who, after a careful and detailed consideration thereof, rejected the appeal by order dated 12.08.1995. The previous service record of the petitioner is referred to and to the fact that the petitioner was earlier cautioned for proceeding on leave in spite of clear instructions from his superiors not to do so, that the petitioner was informed, vide letter dated 02.11.1984, of his non availability at the shop floor and that he was issued memo dated 14.10.1993 for non-submission of monthly reports, for not making any efforts to improve his performance in sales and collection, and for absenting himself from work and making frequent trips without sanction. Allegations of harassment and non-payment of salary are denied as incorrect and false. It is stated that the petitioner failed to produce his muster roll, duly counter-signed by his superior for the month of September, 1993, and in the absence thereof, salary was not paid until necessary formalities were complied with by the petitioner. It is stated that the petitioner, incharge of Ahmedabad and Rajasthan regions, immediately after transfer to Hyderabad, failed to handover charge of the Rajasthan region, and was therefore not permitted to join duty at Hyderabad without handing over charge of the Rajasthan region. The allegation that the petitioner was not permitted to join when he reported for duty on 29.11.1993, despite handing over charge, is denied. The allegation that the charges levelled against the petitioner are vague is also denied. It is stated that only after understanding the charges levelled against him had the petitioner submitted his explanation and the plea that the charges are vague had been taken for the first time in the affidavit filed in support of the writ petition. The allegation that no witnesses were examined, in support of the Management, is also denied and it is stated that, in fact, the presenting Officer had examined two witnesses Sri K.V.S.S.Mangapathi Rao, Accounts Officer as M.W.1 and Sri G.Gnaneswar Rao, Manager (Marketing) as M.W.2 and that the petitioner had cross-examined M.W.1, but had declined to cross-examine M.W.2 though an opportunity was given to him to do so. The allegation that the presenting Officer had marked two more documents after conclusion of the petitioner's evidence

is denied. It is stated that the enquiry proceedings would reveal that no documents were filed after conclusion of the evidence, and that these allegations were contrary to the records. It is stated that the enquiry was conducted in accordance with principles of natural justice and that the petitioner never raised any such objections in his explanation submitted pursuant to the show cause notice on the findings of the enquiry officer.

7. Respondents would deny the allegation, that the enquiry officer had relied upon a part of the evidence that was deleted with the consent of both the parties by the enquiry officer himself, and submit that no part of the deposition was deleted by the enquiry officer. It is stated that the findings of the enquiry officer are based on the evidence available on record and that the punishment imposed on the petitioner is proportionate to the misconduct committed by him, as the charges are serious and grave in nature. It is stated that the Lamp Unit of M/s HMT Limited was closed on 31.12.2000 and most of the employees were relieved on VRS and a small portion of the employees were transferred to other units and that M/s. HMT Machine Tools Ltd. is running with heavy losses since several years.

8. Before examining the rival contentions, it is necessary to refer to the charge sheet dated 17.01.1994, which reads as under:-

"It has been reported that while you were posted as Asst. General Manager, Lamp Marketing at Ahmedabad, you had visited Hyderabad for monthly Review meeting held on 28/29th September, 1993. After the Review meeting, you were instructed by your superior officer to stay back at Hyderabad to discuss some serious pending issues which you had failed to do so despite clear instructions and left Hyderabad without the permission of your superior officers. You thereby disobeyed the lawful and reasonable orders of your superiors.

Further, that you were transferred vide office order No.42/93 dated 5.10.1993 to Lamps Unit at Hyderabad, and without handing over the charge of Rajasthan Region, you came to Head Quarters to report for duty on 26.11.1993 which was not allowed. Further, you absented from duty without leave or permission during the period from 30.9.1993 to 26.11.1993 inas much as you did not report your whereabouts during this period to your superior officers at Headquarter at Hyderabad. Further, you also failed to submit your detailed tour reports and attendance on time.

Further more that in spite of clear written instructions from the Lamp Head Quarters at Hyderabad not to raise any further bills on Lamps Dealers viz. M/s Kanchan Enterprises

and M/s Jodhana Trading Corporation, due to huge amounts outstanding from the above said dealers to the Company, you continued supplies and raised bills on the said dealers even without obtaining the required Bank Guarantee from the said dealers. Thereby you have failed to comply with the clear instructions of your superiors as aforesaid. The details of your having supplied goods to the parties are given as under:

a. Supplies were continued without collecting the overdue payments from M/s Kanchan Enterprises, which were around Rs.4.80 lakhs in September 1992 to Rs.7.72 lakhs as on 31.12.1992. In spite of the clear instructions not to make supplies to the above party as the collections from the said party were minimum and cheques issued were dishonoured, you have made heavy supplies of materials to the above party much against the credit policy of the company.

b. Supplies were also continued inspite of huge amount outstanding from M/sJodhana Trading Corporation, which were around Rs.3.71 lakhs in September 92 to Rs.4.01 lakh as on 31.12.1992. Supplied have been continuously made to the above party without collecting cheque and without obtaining Bank guarantees much against the Credit Policy of the Company.

The outstanding amount due from the said dealers as on date are about Rs.6.84 lakhs from M/s. Kanchan Enterprises and Rs4.28 lakhs from M/sJodhana Trading Corporation, Rajasthan respectively.

The above two instances represents gross violation of the Credit Policy of the company causing financial loss and business of the company.

Under the circumstances, you are alleged to have committed the following misconducts under the Conduct, Discipline and Appeal Rules of the Company applicable to you:

Charge No.1: Wilful disobedience of any lawful and reasonable order of the superior under Clause 23.1.2

Charge No.2 : Wilful negligence in discharge of the duties under Clause 23.12

Charge No.3: Commission of any act subversive of discipline 23.1.2

Charge No.4: Absence without leave for more than 7 consecutive days under Clause 23.1.7

Charge No.5: Absence from the appointed place of work without permission under Clause 23.1.32

Charge No.6: Breach of general conduct clause No.22(c) & 22(a)

Charge No.7: Any other act or omission which are misconduct under Clauses 23.1.35

Charge No.8: Any other act or acting under outside influence in connection with the business or property of the Company under clause 23.1.4."

9. At the commencement of the enquiry proceedings, the Enquiry Officer explained, to both the parties, the procedure intended to be followed in

conducting the enquiry. The Enquiry Officer informed that the presenting officer would be allowed first to present the management's case producing documents in evidence, written statement, witnesses etc., If any witness was produced the defendant would have the opportunity to cross-examine them. Thereafter, the defendant would have full opportunity to defend his case producing documents, written statement, witnesses and if any witness were produced, the presenting officer would have the opportunity to cross-examine the witness. The Enquiry Officer also explained that re-examination of witnesses would also be permitted wherever necessary. The petitioner was informed that he could have the assistance of a co-employee, if he so desired. The petitioner, however, declined to take the assistance of a co-employee. On the charges being read out, the petitioner was asked as to whether he accepted or denied the charges. The petitioner admitted to para-1 of the charge- sheet dated 17.01.1994 with the qualification that he stayed upto 5.30 pm on 30.09.1993 and, as he could not meet the superior officer, he had left and had later apologized for the same. The petitioner however denied the allegations in para-2, 3(a) and 3(b) of the charge sheet. On behalf of the management, two witnesses were examined and 21 documents were marked.

10. Sri K.V.S.S. Mangapathi Rao, Accounts Officer, who was presented as M.W-1, outlined the credit policy of the corporation. He stated that there was no business operation prior to the petitioner joining at the Ahmedabad region. He stated that he had informed the petitioner about over-dues from M/s. Kanchan Enterprises and M/s. Jodhana Trading Corporation, without Bank Guarantees and that he had advised the petitioner to avoid taking cheques from these parties as their cheques had already been dishonoured. M.W-1 deposed that, in spite of clear instructions, the petitioner continued to give credit to those parties violating the credit policy of the company. On being cross-examined, M.W-1 clarified that M/s. Jodhana Trading Corporation had collected material from the transporter without making payment to HMT, that M/s. Kanchan Enterprises had furnished a Bank Guarantee worth of Rs.20,000/- and that the company was accepting cheques from dealers against Bank Guarantee to the extent of the Bank Guarantee amount as per the Credit Policy of the Company.

11. Sri G. Gnaneshwara Rao, Manager (Marketing) was examined as M.W-2. He outlined various transactions. He stated that he was one of the Committee

Members which went into the details of the Stocks, Challans, Outstanding collections etc., pertaining to the petitioner, consequent on his application for voluntary retirement vide letters dated 22.03.1994 and 27.03.1994. M.W-2 deposed that he had visited Ahmedabad and Jaipur in this connection and had submitted a report to the General Manager (Lamps) vide letter dated 07.04.1994 wherein it was brought out that the Credit Policy of the company had come into existence from 07.07.1991 well before operations were started in Jaipur, that this Credit Policy was circulated to all Regional Chiefs and that in all regional sales review meetings the need for strict adherence to this Credit Policy was emphasized. The committee had observed that stocks were given, particularly to M/s. Jodhana Trading Corporation and M/s Kanchan Enterprises, over-looking the Credit Policy, that major lapses in documentation and despatch of stocks had occurred, some stocks had been sent on self-lorry receipts and some directly to the party enabling them to receive stocks without making payment and rendering it difficult for the amounts due to be collected. The Committee had also observed that no serious effort had been made in collecting payments and that material was continued to be supplied for longer periods involving huge amounts. The Committee had observed that Sri R.K. Sharma, after taking over charge from the petitioner at Jaipur, had found around 18 cheques belonging to M/s. Kanchan Enterprises, of Dena Bank and UCO Bank for various amounts, out of which 8 cheques had already bounced, and the remaining 10 were blank cheques. The Committee had observed that keeping cheques at Jaipur office without forwarding them to Head Office, was highly objectionable, that stocks were supplied to M/s Jodhana Trading Corporation over-looking the Credit Policy from September 1992 to August 1993 and to M/s. Kanchan Enterprises from July 1992 to March 1993 regularly i.e., almost every month without collecting the money as per the policy. M.W-2 further stated that though the Credit Policy was in vogue, it was not being followed in respect of sales from Jaipur office, that materials were sent to M/s Jodhana Trading Corporation, in the month of September 1992 and even before the amount was received for this supply, two more bills were raised in the same week, and despite not realizing the amount, materials were continued to be supplied to them in October, 1992, January 1993 and almost every month thereafter till August 1993. M.W-2 stated that no payment was received by the banker for all these consignments and in turn the banker had sent back the bills

(18 bills) without payment. The petitioner chose not to cross-examine M.W-2.

12. The Enquiry Officer held the petitioner guilty of charges 1 to 3. With regards charges 4 and 5, the Enquiry Officer held that for the period from 18.10.1993 to 28.10.1993 the action of the petitioner in not communicating to his supervisors his whereabouts and in not informing Headquarters was in clear violation of Clause 23.1.7 and 23.1.32 of the CD & A Rules of the Company, that the petitioner had also committed default in not handing over charge of the Rajastan region before leaving for Hyderabad and that his statement that there was no one to handover charge was not tenable, as he could have obtained permission of the Competent Authority to leave Rajasthan without handing over charge of the Rajasthan region. With regards charges 6 and 8, the Enquiry Officer considered the documentary evidence, the oral evidence of M.Ws.1 and 2 and the admission of the petitioner that he had obtained Bank Guarantee from M/s. Kanchan Enterprises only for Rs.20,000/-, whereas stocks far in excess thereof had been supplied. The Enquiry Officer held that the petitioner could have obtained a fresh Bank Guarantee for the value of the stocks given from time to time. The Enquiry Officer took note of the Committee's observations that no serious efforts were made to collect payment and that the petitioner continued to give stocks contrary to the Company's Credit Policy. The Enquiry Officer held that keeping loose cheques and dishonoured cheques in the files, instead of taking further action to ensure that the Company's interest was safeguarded, was in violation of the Company's Credit Policy. The Enquiry Officer took note of the fact that the petitioner was repeatedly reminded of his gross violation of the Credit Policy and that these warning letters had not evoked any response from the petitioner. The Enquiry Officer observed that the self-cheques collected from M/s. Kanchan Enterprises, had not been presented in the bank for realization, that collecting self-cheques was highly irregular and that the entire action was resorted to only to favour the dealers. The Enquiry Officer took note of the evidence of M.W-2 that keeping the dishonoured cheques inside his files, without taking further action, was not conducive to the best interest of the company. The Enquiry Officer held charges 6 and 8 as also proved. Since charge No.7 was over-lapping, the Enquiry Officer held that charge No.7 was also proved.

13. The Disciplinary Authority, in the impugned proceedings dated 03.04.1995, after carefully considering the evidence on record, the proceedings of the Enquiry, the report of the Enquiry Officer containing his findings and conclusions wherein the petitioner was found guilty of all the charges and on taking into consideration the contentions raised by the petitioner in his letter dated 30.01.1995, fully concurred with the findings and conclusions of the Enquiry Officer. The Disciplinary authority rejected the petitioner's contention, that the charges were baseless, contradictory, concocted as incorrect, and held that it had been sufficiently proved with the evidence on record in the enquiry, that the petitioner was guilty of the charges. Since the charges of misconduct proved, were grave and severe, and more so as the petitioner was a senior executive in the rank of Asst. General Manager, the disciplinary authority held that ends of justice would be met only in awarding the maximum punishment of dismissal from service. The Disciplinary Authority went through the past record of service of the petitioner and could not find any extenuating or mitigating circumstances which merited awarding lesser punishment than that of dismissal. Petitioner was accordingly dismissed from service under clause 23.2.2(c) of the HMT Conduct, Discipline & Appeal Rules.

14. The petitioner preferred an appeal to the Appellate Authority on 29.04.1995. The appellate authority considered the charges, the records relating to the domestic enquiry, the findings of the enquiry officer and other records. He also examined the issues raised by the petitioner, in his appeal dated 29.04.1995 and found that the issues had already been raised by him in his defence earlier and that these issues had been considered by the enquiry officer who had held the charges proved in the enquiry. The Appellate Authority found the allegations made by the petitioner against the enquiry officer to be baseless as also the allegations made by the petitioner against other executives of the company. The Appellate Authority came to the conclusion that the punishment, of dismissal from service, imposed on the petitioner, was justified and that he did not find any mitigating or extenuating circumstances to review the punishment. While confirming the order of dismissal, imposed by the disciplinary authority, the appellate authority held that in view of the petitioner's request, his period of absence, other than which had been proved as unauthorized absence in the enquiry, be considered as leave based on the leave application already

submitted by him subject to availability of leave to his Credit, and that the T.A. bill and Transfer allowance, as per the claims submitted by him, would also be considered subject to the Company's Rules.

15. As referred to above, two witnesses were examined on behalf of the management M.W-1 Sri K.V.S.S. Mangapathi Rao, Accounts Officer, and M.W-2 Sri G. Gnaneswarao, Manager (marketing). As such the contention that no witnesses were examined on behalf of the management and that documents were marked without witnesses being produced, cannot be accepted. The contention that documents were marked, after the evidence of the petitioner was recorded, is also without merit, more so in the absence of details being furnished as to which documents were marked after his evidence was concluded. Respondents, in their counter affidavit, emphasise that no documents were marked after conclusion of the petitioner's evidence. As has been specifically stated in the counter-affidavit, no portion of the evidence of M.W-1 was deleted, much less the enquiry officer deleting a portion of the evidence of M.W-1. The contention that the petitioner's evidence was taken, at the initial stage of the enquiry, prior to the evidence on behalf of the management cannot also be accepted. The petitioner had admitted to the first part of the charge with the qualification that he could not meet his superior officer before 5.30 p.m. Since the petitioner had admitted to this charge, the enquiry officer had sought clarifications in this regard. It cannot therefore be said that the petitioner's evidence was taken at the initial stage of the enquiry prior to evidence being adduced on behalf of the management. Petitioner's contention that the charges are vague and do not constitute misconduct cannot also be accepted. Not only did the petitioner submit his explanation thereto, he also participated in the enquiry proceedings, cross-examined M.W-1, marked documents on his behalf as exhibits and put forth his defence before the enquiry officer. Even subsequent thereto, this plea was neither raised before the Disciplinary Authority nor the Appellate Authority. It is for the first time that this contention is raised in the affidavit filed in support of the writ petition and as such is to be rejected. The plea of victimization and harassment is also without basis. Without arraigning the officers, who are said to have victimized and harassed him, as parties to the writ petition, this plea of the petitioner cannot be examined. The Enquiry Officer, on the basis of the evidence on record, held the petitioner guilty of misconduct. The findings of the Enquiry

Officer based on the evidence on record, cannot be characterized as perverse. The contention that the Disciplinary Authority had committed an illegality in taking cognizance of the misconduct which had been pardoned is also without basis. Similarly, the contention regarding non-application of mind by the enquiry officer does not merit acceptance. The findings of the Enquiry Officer are only on matters which form part of the charge sheet. Clarifications sought for by the enquiry officer cannot be characterized as inquisitorial nor can the Enquiry Officer be said to have donned the robes of a prosecutor. The Appellate Authority specifically noted that he had taken into consideration the several contentions raised by the petitioner. It is well settled that while confirming the order of the Enquiry Officer and the Disciplinary Authority, and where the Appellate Authority concurs with their findings, separate elaborate reasons need not be furnished. The order of the appellate Authority is a reasoned order.

16. The contention that the punishment imposed on the petitioner is grossly disproportionate is also without basis. The punishment imposed is for proved misconduct, which are grave and severe in nature, including supplying Company's products contrary to the Credit Policy, without adequate security in the form of Bank Guarantee, thereby putting the company to a loss of several lakhs of rupees. The charges held proved against the petitioner also include his failure to recover the dues and to have kept blank cheques of parties in the file without forwarding them to the head office. Several other acts of indiscipline by the petitioner have also been held to have been proved.

17. It is well settled that the quantum of punishment to be imposed on an employee for proved misconduct is normally for the employer to decide and this Court, under Article 226 of the constitution of India, would not, normally, interfere with the punishment imposed on an employee for proved misconduct, unless the punishment imposed is one which could not have been imposed at all or is one which shocks the conscious of this Court. In the facts and circumstances of the present case, no interference is called for with regards the quantum of punishment imposed on the petitioner.

18. With regards failure to pay his salary for the month of September 1993, respondents categorically state, in the counter-affidavit, that it is solely on

account of the petitioner's failure to produce the muster roll duly counter-signed by his superior. Denial of payment of salary for the month of September,1993 was no fault of the respondents and it cannot therefore be said that the petitioner was denied the opportunity of effectively defended himself in the disciplinary proceedings.

19. The Writ Petitioner as filed fails and is accordingly dismissed. There shall however be no order as to costs.

Date: .02.2006.

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RAMESH RANGANATHAN, J

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